

Finding 3. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff reviewed independent expenditures totaling \$680,735 that TPE disclosed on Schedule E (Itemized Independent Expenditures). However, the Audit staff identified additional expenditures totaling \$848,522 (845,310 + 3,212) which appeared to be media-related independent expenditures that TPE disclosed on Schedule B, Line 21b (Operating Expenditures) and Line 29 (Other Disbursements).

Of the \$680,735 independent expenditures reported on Schedule E, TPE did not file 24/48-hour reports for seven expenditures totaling \$28,003. Additionally, of the \$848,522 disclosed as operating expenditures and other disbursements which appeared to be independent expenditures, TPE did not file any 24/48-hour reports.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated that the identified communications in question were for fundraising and not electioneering purposes. TPE did not address the 24/48-hour reports specifically but stated that the bulk of the activity was towards fundraising and that the identified communications were for fundraising and not for electioneering purposes.

The Commission approved a finding that TPE failed to properly disclose independent expenditures totaling \$848,522. In addition, the Commission approved a finding that TPE did not file 24/48-hour reports totaling \$28,003 for independent expenditures reported on Schedule E; and that TPE did not file 24/48-hour reports for additional apparent independent expenditures totaling \$848,522.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Expressly advocating means any communication that:

- Uses phrases such as "vote for the President" or "re-elect your Congressman" or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required for each additional \$1,000 that aggregates. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. A 48-hour report is required each time additional independent expenditures aggregate \$10,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. CFR §104.14(b)(1).

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election or defeat of one clearly identified candidate. 11 CFR§ 100.22
(b).

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of disclosure errors for apparent independent expenditures. The TPE representative had no immediate comments, however, in response to the exit conference, provided additional e-mail communications and invoices which the Audit staff reviewed and incorporated into this finding.

The Interim Audit Report recommended that TPE provide:

- Documentation and evidence that apparent independent expenditures noted above did not require reporting as independent expenditures. Evidence should have included invoices with the corresponding communications and, where applicable, TPE's payment information; or
- Absent such evidence, TPE should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and should have submitted revised procedures for reporting independent expenditures.

3. Committee Response to Interim Audit Report

TPE did not submit a response to the Interim Audit Report, nor did it file amended disclosure reports. Absent evidence that the expenditures in question did not require reporting as independent expenditures, the Audit staff considers these expenditures to be independent expenditures.

4. Draft Final Audit Report

The Draft Final Audit Report noted that no documentation or evidence was provided by TPE to substantiate that apparent independent expenditures totaling \$848,522 did not require reporting as independent expenditures. In addition, TPE did not amend its reports to disclose these disbursements as independent expenditures on Schedule E.

5. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, TPE stated that the identified communications in question were for fundraising and not electioneering purposes. Absent evidence that these expenditures are not independent expenditures and do not require reporting as independent expenditures, the Audit staff maintained that these expenditures were independent expenditures.

Commission Conclusion

On November 2, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TPE did not properly disclose independent expenditures totaling \$848,522.

The Commission approved the Audit staff's recommendation.

5. Committee Response to Draft Final Audit Report.

In response to the Draft Final Audit Report, TPE did not address the 24/48-hour reports specifically but stated that the bulk of the activity was towards fundraising and that the identified communications were for fundraising and not for electioneering purposes.

Commission Conclusion

On November 2, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that TPE did not file 24/48-hour reports totaling \$28,003 for independent expenditures reported on Schedule E; and that TPE did not file 24/48-hour reports for additional apparent independent expenditures totaling \$848,522.

The Commission approved the Audit staff's recommendation.

Finding 5. Failure to Itemize Debt and Obligations

Summary

During audit fieldwork and in the course of review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations pertaining to these expenditures totaling \$310,561.

TPE did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, TPE stated it was willing to amend its reports as needed, however, has not done so as of yet. As such, TPE has not complied with the recommendation.

The Commission approved a finding that TPE failed to itemize debts and obligations totaling \$310,561.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A. Facts

During audit fieldwork, and in course of the review of independent and apparent independent expenditures, the Audit staff noted that TPE failed to properly disclose debts and obligations owed to 19 vendors totaling \$310,561.³ The amounts were outstanding for a range of between 34 to 207 days and were mostly for advertising, media, printing,

³ Each debt amount was counted once, even if it required disclosure over multiple reporting periods.

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